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Polis Di Raja Malaysia (PDRM) (Cawangan Pendakwaan Betong) v Tony Walter Lanyun ak Nador

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HIGH COURT (SRI AMAN) — CASE NO SRA-41S–7/7 OF 2015
ALWI ABDUL WAHAB JC
1 FEBRUARY 2016

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Criminal Procedure — Appeal — Appeal by prosecution — Appeal against magistrates' court decision — Accused released on bond of good behaviour — Accused charged under s 44(1)(b) of the Road Transport Act 1987 — Content of alcohol in body exceeding permitted limit allowed by law — Criminal Procedure Code s 294 — Whether sentence adequate — Whether reflected gravity and seriousness of offence

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This was an appeal by the prosecution against the order of the magistrate in releasing the accused on bond of good behaviour pursuant to s 294(1) of the Criminal Procedure Code ('the CPC') for a charge under s 44(1)(b) of the

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Road Transport Act 1987. The accused was charged because the content of alcohol in his body was exceeding the permitted limit allowed by the law. However, he was not charged with negligence in causing the accident or driving in dangerous manner which endangered the life of others. The accused was the sole breadwinner of the family supporting his old-aged parents. His father

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suffered from broken ribs and his mother was sick. The magistrate had taken into account among others; the age of the accused, his guilty plea, and characters in coming up with the decision. The prosecution urged the court to enhance the sentence on the grounds that it was inadequate and did not reflect the gravity and the seriousness of the offence.

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Held, dismissing the appeal:

(1) The magistrate had applied the correct principles and had taken into consideration all relevant factors in making the orders under s 294(1) of the CPC. It was not illegal for the magistrate to invoke s 294(1) of the CPC despite the fact that the accused was charged under the law which provides for mandatory imprisonment term on conviction. The order of disqualification from holding and obtaining any driving licence for a period of five years was already a punishment for him for he had to find for an alternative means of transportation instead of driving himself to the place of work and he would definitely incur extra costs (see paras 2 & 4–5).

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(2) Whatever sentence imposed must be based on facts of each individual case. Each case depends on its own facts and it is neither possible nor

desirable to attempt to lay down any fixed sentence that is meant to govern a particular type of case. That being the case, the decision in the present case should not be used as blanket application in all case including drunkard drivers (see para 7).

[Bahasa Malaysia summary

Ini adalah rayuan oleh pihak pendakwaan terhadap perintah majistret dalam melepaskan tertuduh atas jaminan berkelakuan baik berikutan s 294(1) Kanun Tatacara Jenayah ('KTJ') bagi tuduhan di bawah s 44(1)(b) Akta Pengangkutan Jalan 1987. Tertuduh dituduh kerana kandungan alkohol di dalam badannya melebihi had yang dibenarkan oleh undang-undang. Walau bagaimanapun, dia tidak dituduh dengan kecuaian dalam menyebabkan kemalangan atau memandu dengan cara berbahaya yang membahayakan nyawa yang lain. Tertuduh adalah pencari nafkah tunggal keluarga membantu kedua-dua ibubapanya yang tua. Bapanya mengalami tulang rusuk yang patah dan ibunya sakit. Majistret telah mengambil kira antara yang lain; umur tertuduh, pengakuan bersalahnya, dan sifat-sifat dalam mencapai kepada keputusan. Pihak pendakwaan mendesak mahkamah untuk meningkatkan hukuman atas alasan bahawa ia tidak wajar dan tidak membayangkan graviti dan keseriusan kesalahan tersebut.

Diputuskan, menolak rayuan:

(1) Majistret telah mengguna pakai prinsip-prinsip betul dan telah membuat pertimbangan kesemua faktor-faktor relevan dalam membuat perintah-perintah di bawah s 294(1) KTJ. Ia tidak salah di sisi undang-undang bagi majistert untuk membangkitkan s 294(1) KTJ meskipun fakta bahawa tertuduh dituduh di bawah undang-undang yang memperuntukkan terma penjara mandatori atas sabitan. Perintah tidak membenarkan daripada memegang dan mendapatkan apa-apa lesen memandu bagi tempoh lima tahun telah menjadi hukuman untuknya kerana dia perlu mendapatkan pengangkutan alternatif di mana sepatutnya dia memandu sendiri ke tempat kerja dan dia semestinya menanggung kos tambahan (lihat perenggan 2 & 4–5).

(2) Apa-apa hukuman yang dikenakan mesti didasarkan atas fakta setiap kes individu. Setiap kes bergantung ke atas faktanya sendiri dan ia tidak mungkin atau dapat mencuba untuk menjatuhkan apa-apa hukuman yang ditetapkan yang bermaksud untuk mengawal jenis kes tertentu. Dengan itu, keputusan dalam kes ini tidak patut digunakan sebagai permohonan menyeluruh dalam kesemua kes termasuk pemandu-pemandu mabuk (lihat perenggan 7).]

Notes

For a case on appeal by prosecution, see 7(2) *Mallal's Digest* (5th Ed, 2015) para 492.

Cases referred to

Nor Afizal bin Azizan v PP [2012] 6 MLJ 171; [2012] 6 CLJ 370, CA (folld)
Pendakwaraya lwn Alias Hamid [2014] 1 LNS 908, HC (refd)

Legislation referred to

Criminal Procedure Code s 294(1)
Road Transport Act 1987 s 44(1)(b)

Mohd Afif bin Ali (Deputy Public Prosecutor, Attorney General's Chambers) for the appellant.
Trabawan Mandi (Sia Trabawan & Co Advocates) for the respondent.

Alwi Abdul Wahab JC:

INTRODUCTION

[1] The prosecution appealed against the order of the learned magistrate in releasing the accused on bond of good behaviour under s 294(1) of Criminal Procedure Code ('the CPC') for a charge under s 44(1)(b) of the Road Transport Act 1987. The prosecution urged this court to enhance the sentence for it is inadequate and does not reflect the gravity and the seriousness of the offence.

THE FINDINGS OF THE COURT

[2] In my view, the learned magistrate had applied the correct principles and had taken into consideration all relevant factors in making the orders under s 294(1) of the CPC. I have no reason therefore to interfere with the learned magistrate's decision (*Nor Afizal bin Azizan v Public Prosecutor* [2012] 6 MLJ 171; [2012] 6 CLJ 370).

[3] In his grounds of decision the learned magistrate had taken into account among others; the age of the accused, his guilty plea, and characters in coming up with the decision. The accused is the sole breadwinner of the family supporting his old aged parents. His father suffered from broken ribs and his mother was sick. I agree with learned magistrate that putting the accused behind bar would incarcerate him further and that may give an impact to his family livelihood.

[4] Furthermore, the order of disqualification from holding and obtaining any driving licence for a period of five years is already a punishment for him for he had to find for an alternative means of transportation instead of driving himself to the place of work and he would definitely incur an extra costs.

[5] It is also my view that it is not illegal for the learned magistrate to invoke s 294(1) of the CPC despite the fact that the accused was charged under the law which provides for mandatory imprisonment term on conviction (*Pendakwaraya lwn Alias Hamid* [2014] 1 LNS 908).

[6] It must be noted that the accused was not charged with negligence in causing the accident or driving in dangerous manner which endangering the life of others which in my view would justify for a heavier sentence. Here, it is the case of a young man who was charged because the content of alcohol in his body was exceeding the permitted limit allowed by the law. Nevertheless, as commented by the learned magistrate, the accused was in his best element when he helped out the victim immediately after the accident to show that he was not drunk and sensible to his surroundings.

[7] In agreeing with the learned magistrate's order I am guided by the Court of Appeal's decision in *Nor Afizal bin Azizan v Public Prosecutor* that whatever sentence to be imposed must be based on facts of each individual case. Each case depends on its own facts and it is neither possible nor desirable to attempt to lay down any fixed sentence that is meant to govern a particular type of case. That being the case, the decision in the present case should not be used as blanket application in all cases including drunkard drivers.

CONCLUSION

[8] Accordingly, I dismissed the appeal.

Appeal dismissed.

Reported by Afiq Mohamad